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BEFORE THE

Federal Communications Commission

NOV 28 1994

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 90 of the) PR Docket No. 93-144
Commission's Rules to Facilitate Future) RM-8117, RM-8030
Development of SMR Systems in the) RM-8029
800 MHz Frequency Band)

and

Implementation of Section 309(j) of)
the Communications Act - Competitive) PP Docket No. 93-253
Bidding 800 MHz SMR)

To: The Commission

MOTION FOR EXTENSION OF TIME

The Southern Company ("Southern"), by and through its undersigned counsel, moves the Federal Communications Commission, pursuant to Section 1.46 of its Rules and Regulations, to extend the Comment and Reply Comment deadline in the above-captioned proceeding for an additional 45 days.^{1/} Specifically, Southern seeks until January 19, 1995 to file Comments and February 3, 1995 to file Reply Comments. Southern submits the following in support of its motion.

^{1/} In the Matter of Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band and Implementation of Section 309(j) of the Communications Act-Competitive Bidding 800 MHz SMR, PR Docket No. 93-144, PP Docket No. 93-253, adopted October 20, 1994 (FNPRM). The original Comment Date is December 5, 1994 and the original Reply Comment Date is December 20, 1994.

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Background and Introduction

1. In its Further Notice of Proposed Rule Making, the Commission proposes to amend the procedures in which it currently licenses 800 MHz Specialized Mobile Radio (SMR) spectrum. Specifically, the Commission has proposed to license the remaining "upper" 200 channels of SMR spectrum on a contiguous Metropolitan Trading Area (MTA) basis, while licensing the remaining 80 SMR local channels on either a site-specific or channel block basis (i.e., Basic Trading Area (BTA)). If two or more applicants file for the same wide-area MTA or local BTA channel blocks, the Commission also proposes to dispose of the license via the competitive bidding process.

2. Southern is in the process of developing a wide-area 800 MHz SMR system in the southeastern region of the United States. Accordingly, it has a strong interest in this proceeding. First, Southern's existing SMR authorizations may potentially be stunted, as the Commission proposes to preclude expansion of existing SMR systems. Second, Southern will be subject to the new SMR licensing rules adopted in this proceeding. Before such measures are adopted in this proceeding, Southern believes that a realistic assessment of whether (and how much) SMR spectrum is currently available for future licensing, and who currently controls the 800 MHz SMR spectrum is essential.

Such a showing will shed light on whether it is even plausible to license the remaining 800 MHz SMR spectrum on an MTA or BTA basis. The showing will also indicate whether there is a sufficiently diverse universe of SMR entities who would participate in the event of a possible auction.

3. Accordingly, Southern seeks additional time which will enable it to obtain and analyze the spectrum availability and market diversity information. Southern will not be able to gather this data and compose comments by the December 5, 1994 Commission deadline.

Discussion

4. Southern already has obtained copies of the 800 MHz SMR Spectrum Availability Studies prepared by the Industrial Telecommunications Association (ITA) and the American Mobile Telecommunications Association (AMTA).^{2/} ITA and AMTA developed these studies to encourage the Commission to process the pending backlog of SMR applications for the remaining 800 MHz channels, rather than continue to "freeze" processing of these applications

^{2/} See, 800 MHz SMR Spectrum Availability Report (55 and 70 mile search of the BTAs), October 11, 1994.

or return them for competitive bidding.^{3/} A review of these studies indicate that there is little 800 MHz SMR spectrum available in all of the BTAs. This information, while helpful, does not provide a complete picture.

5. Southern is in the process of collecting data that it believes will be critical to making a more informed decision on whether MTA licensing is in the public interest. The FNPRM advances several proposals that may appear beneficial as an abstract proposition, but may in fact be anticompetitive when seen in the context of the existing SMR market structure. First, the proposal will allow an applicant to bid for multiple blocks within a given MTA. Therefore, one entity could successfully bid on all four MTA blocks proposed to be auctioned.^{4/} Second, the MTA licensee will be allowed to negotiate with existing SMR licensees to purchase, merge or swap frequencies.^{5/} Additionally, the Commission proposes to allow terminated licenses within the MTA block to automatically revert to the MTA licensee.^{6/} Finally, the FNPRM proposes to prohibit existing

^{3/} See, "Trade Associations Find Inadequate Spectrum for 800 MHz License Auctions", Land Mobile Radio News, October 7, 1994, at p. 6.

^{4/} FNPRM at ¶22.

^{5/} Id. at ¶35.

^{6/} Id. at ¶31.

SMR licensees from expanding their current operations or service areas without the consent of the MTA licensee.^{7/} With the ongoing and pending SMR market consolidations, the SMR frequencies could be secured by a single SMR provider. An analysis of the SMR market dominance is essential to the Commission's consideration before adoption of any of its proposed rules.

6. Moreover, the Justice Department already has determined that there is an undue concentration of certain SMR companies in most markets.^{8/} Although the proposed Final Judgment focuses on Motorola's and Nextel's SMR holdings in the 900 MHz band, it also encompassed the 800 MHz SMR licenses held by these entities, requiring them to divest 42 SMR channels in Atlanta, Georgia. With the Justice Department's close scrutiny of SMR concentration, the Commission must be abundantly cautious before adopting new SMR licensing rules that perpetuate undue concentration in this industry. The data that Southern is gathering should assist the Commission in analyzing the impact of its proposals on the eventual SMR landscape. This assessment is important before an FCC decision in this proceeding can be reached.

^{7/} Id. at ¶37.

^{8/} See, U.S. v. Motorola Inc. and Nextel Communications, Inc., Final Judgment, Civ. Action No. 94-2331, October 27, 1994.

7. Furthermore, the Commission should use the additional time to conduct, sua sponte, a factfinding on all of the dominant SMR players to determine the extent of their SMR holdings in the relevant 280 channel block. Much of the information being collected by Southern is derived from FCC-like databases which do not disclose management agreements and other arrangements that perhaps camouflage the true identity of the entity controlling the SMR system. The Commission's request for disclosure from certain dominant players of all the 800 MHz SMR holdings and management agreements will provide the most accurate depiction of the viability of auctioning the proposed 200 channel block. Such factfindings are not uncommon for the Commission,^{9/} and could prove beneficial when it reports to Congress on the effectiveness of the auctions for entry of new companies into the telecommunications market.^{10/}

^{9/} See e.g., In the Matter of Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1993, Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48, Appendix G, adopted September 19, 1994 (where dominant cable providers were required to disclose their horizontal concentration in the cable television industry).

^{10/} See Pub. L. No. 103-66, Title VI, Section 6002(a), 107 Stat. 312, 392 (1993).

Conclusion

Southern needs additional time to gather the data in order to provide the Commission with meaningful Comments. It could very well be the case that this data will demonstrate that the proposals advanced in this proceeding are inappropriate in light of the real world position of SMR licenses. Based on the above, grant of the instant Motion is warranted and in the public interest.

Respectfully submitted,

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Dated November 28, 1994

CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, a secretary in the law office of Keller and Heckman, hereby certify that a copy of the foregoing Motion for Extension of Time has been provided to the following persons via hand delivery on this 28th day of November, 1994:

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